IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4074 of 2002
Date of Decision: 2.8.2007

Raja Singh ...Appellant

Versus

Municipal Council and others ...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Amit Jain, Advocate, for the appellant.

Shri Sumeet Goel, Advocate, for respondent Nos. 1 and 2.

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby his suit for permanent injunction was partly decreed.

The plaintiff claimed a decree for permanent injunction in respect of the plot in dispute on the basis of title having purchased the same vide sale deed dated 29th of Pausha Sambat 2006 BK, Exhibit PW3/A and thus claiming to be in possession. The Municipal Council denied the title of the plaintiff and asserted that in fact, the Municipal Council is owner in possession of the suit land, which is being used as a thoroughfare and a graveyard.

Both the Courts have returned a concurrent finding of fact that the plaintiff has failed to prove his ownership over the suit property but found that the plaintiff is in possession of the suit land and thus, granted decree for permanent injunction. It was also found by the learned trial Court that the Municipal Council is the owner of the suit property, which finding was affirmed by the learned first Appellate Court.

Learned counsel for the appellant has vehemently

argued that the learned first Appellate Court has not returned any categorical finding regarding the title of the Municipal Council. In fact, while discussing the evidence led by the parties, it has been found that the Municipal Council has not proved ownership over the suit property and, therefore, a finding regarding the title of the Municipal Council should have been answered against the Municipal Council.

The first Appellate Court has considered the evidence led by the parties including that of DW3 Hasan Mohammad, Rent Controller of the Punjab Wakf Board. It has been found that from the record produced, the Board could not show its ownership in respect of the suit property. After discussing the evidence, the Court has affirmed the judgment and decree passed by the trial Court. Once the Wakf Board is not found to be the owner and the decree passed by the trial Court has been affirmed, it obviously means that the Municipal Council is proved to be owner of the suit property.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which may give rise to any substantial question of law in the present appeal. Hence, the present appeal is dismissed.

Before parting with the present order, it may be noticed that the second appeal filed by the Municipal Council bearing RSA No. 3029 of 2001, stands dismissed by this Court on 28.11.2002.

02-08-2007 (HEMANT GUPTA)
ds JUDGE